IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

OP.No. 38581 of 2002(R)

PETITIONER:

DR.KUNJAMMA GEORGE, PROFESSOR IN MEDICINE, ACADEMY OF MEDICAL SCIENCES HOSPITAL, PARIYARAM, KANNUR DISTRICT.

BY ADV. SRI.K.JAJU BABU,
SMT.M.U.VIJAYALAKSHMI.

RESPONDENTS:
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1. **THE DIRECTOR, ACADEMY OF MEDICAL SCIENCES, PARIYARAM, KANNUR - 670502.**
2. **THE ACADEMY OF MEDICAL SCIENCES(ACME), PARIYARAM, KANNUR 670502, REPRESENTED BY ITS DIRECTOR.**
3. **THE KERALA CO-OPERATIVE HOSPITAL COMPLEX AND ACADEMY OF MEDICAL SCIENCES, PARIYARAM, KANNUR DISTRICT, REPRESENTED BY ITS MANAGING DIRECTOR.**
4. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF CO-OPERATION, GOVT.SECRETARIAT, TRIVANDRUM.**

BY ADV. SRI. V.G. ARUN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 65081/2002 IN O.P. NO. 38581/2002

DISMISSED

03/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. E1.88/97/ACME DTD. 06/08/1997 ISSUED BY THE R.2.

EXT.P.1.A: COPY OF THE ORDER NO. 40/30/91-M (TRG) DTD. 30/08/1997 ISSUED BY THE GOVERNMENT OF MANIPUR.

EXT.P.2: COPY OF THE ORDER NO. 45/81/SP1.3/98/H & FWD DTD. 09/09/1999 ISSUED BY THE PRL.SECRETARY TO GOVT.

EXT.P.3: COPY OF THE MINUTES OF THE BOARD OF CONTROL IN THE MEETING HELD ON 15/09/1999.

EXT.P.4: COPY OF THE NO OBJECTION GIVEN BY THE REGIONAL INSTITUTE OF MEDICAL SCIENCES, IMPHAL TO THE PETITIONER VIDE NO. B/244/73-MC (PT) DTD. 19/04/2001.

EXT.P.5: COPY OF THE G.O. (RT). NO. 842/2001/H&FWD DTD. 24/03/2001 ISSUED BY THE UNDER SECRETARY TO GOVT.

EXT.P.6: COPY OF THE LETTER NO. 14786/S3/2001/H&FWD DTD. 20/04/2001 ISSUED BY THE SECRETARY TO GOVT.

EXT.P.7: COPY OF THE LETTER NO. 20438/S3/2001/H&FWD DTD. 17/05/2001 ISSUED BY THE SECRETARY TO GOVT.

EXT.P.8: COPY OF THE PROCEEDINGS NO. E1-88/97/ACME DTD. 25/05/2001 ISSUED BY THE PARIYARAM INSTITUTE OF MEDICAL SCIENCES AND ADVANCED STUDIES IN TB & CHEST DISEASES.

EXT.P.9: COPY OF THE PROCEEDINGS NO. 88/97/ACME DTD. 16/11/2002 ISSUED BY THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

Thottathil B. Radhakrishnan, J.

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O.P.No.38581 of 2002

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Dated this the 3rd day of July, 2007.

JUDGMENT

Petitioner while working as an Associate Professor in Medicine in a substantive post in the service of the State of Manipur and on deputation to Lady Hardings Medical College, New Delhi was found by the Academy of Medical Sciences to be fit to be brought on deputation to that institution, while it was in its infancy and she was appointed as Professor in August, 1997. The Government of Manipur gave Ext.P1(a) concurrence and petitioner was accordingly appointed in the Academy of Medical Sciences, Pariyaram on deputation basis. It appears that, in 1997, the Academy came to be governed by the Kerala Co-operative Hospital Complex and Academy of Medical Sciences (Board of Control) Rules, 1997, in terms whereof, the appointments to the post in the establishment could be made only with the prior approval of the Board of Control. By Ext.P2 dated 9-9-1999, the Principal Secretary to Government in the Health and Family Welfare (Special) Department in the

Government of Kerala wrote to the Managing Director of the Academy that the Board of Control can regularise the service of the petitioner in the Academy. The Board, thereafter, by Ext.P3, resolved that the petitioner may be absorbed in the service of the Academy as Professor of Medicine on the conditions stipulated therein. As already noticed, the petitioner had been serving the Academy on deputation. This means that, her absorption, unless she objects to it, would, however, depend only on the Government of Manipur agreeing to the decision of the Board of Control of the Academy to absorb the petitioner into its service. The consent of the Manipur Government was granted through the Regional Institute of Medical Sciences, Imphal, as per Ext.P4, thereby meaning that the Government has no objection to the absorption of the petitioner in the Academy with effect from 15-11-1999. The aforesaid would show that the decision as to the absorption of the petitioner was taken by the Board of Control with the prior concurrence of the Government, which would not have been imperative, and the Government of Manipur

had agreed to such absorption of the petitioner in the service of the Academy. May be that, it would have been required that certain formal orders need be issued. But, in the meanwhile, the then Director of Academy laid down office after handing over charge to the petitioner under instructions of the Government, as per Ext.P5. Thus the petitioner herself was officiating as the Director of Academy. She, in her wisdom, issued Ext.P8 proceedings giving effect to the decision as to absorption.

2. Learned counsel for the respondents is right in pointing out that it was away from the principles of propriety that the petitioner herself passed Ext.P8 in relation to her own service with the Academy. Though the petitioner may have a justification that she had earlier sought for the views of the Government in that regard, the Academy ultimately came out with the impugned Ext.P9 on the ground that the appointment of the petitioner was not with the concurrence of the Board of Control, but was done in the capacity of the

Managing Director without any order in that behalf by the Board of Control.

3. The decision in the impugned Ext.P9 is essentially an aftermath of the manner of issuance of Ext.P8. I say so because, it was the necessary consequence of Ext.P3 decision of the Board of Control that the petitioner has to be absorbed, unless she has objections or the Government of Manipur has objections. This is because, even going by the Scheme of the Rules, if the Board of Control chooses to make an appointment, the Managing Director cannot refuse to do so. If that be so, there was a concluded contract in the realm of service laws when the petitioner continue to work for the institution after the Government of Manipur had concurred for the absorption of the petitioner in the service of the Academy with effect from 15-11-1999, following the decision of the Board of Control of the Academy (Ext.P3). Therefore, leaving aside the technical nuances, in law, the petitioner stood absorbed and what would have been required was only the

issuance of formal orders in consonance with Ext.P3 decision of the Board of Control.

4. For the aforesaid reasons, the view in Ext.P9 that the appointment of the petitioner was in violation of the provisions of the Rules of 1997, does not stand.

In the result, the writ petition is allowed quashing Ext.P9. All consequential benefits on account of the setting aside of Ext.P9 shall follow in terms of the decision contained in Ext.P3. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.38581 of 2002

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JUDGMENT

Dated:3-7-2007